92-1984

No. ——

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

PENNSYLVANIA FEDERATION OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES and VINCENT BENNETT, individually and on behalf of all others similarly situated,

Petitioners,

v.

NATIONAL RAILROAD PASSENGER CORPORATION,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are the *Pennsylvania Minimum Wage Act*, 43 P.S. 333.104(c), as codified at 34 Pa. Code 231.1, and the *Pennsylvania Wage Payment and Collection Law*, 43 P.S. 260.1, *et seq.*, preempted by the *Railway Labor Act*, 45 U.S.C. 151, *et seq.*, with respect to Petitioner Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes, as found by the United States Court of Appeals for the Third Circuit?

2. Are the *Pennsylvania Minimum Wage Act*, 43 P.S. 333.104(c), as codified at 34 Pa. Code 231.1, and the *Pennsylvania Wage Payment and Collection Law*, 43 P.S. 260.1, *et seq.* preempted by the *Railway Labor Act*, 45 U.S.C. 151, *et seq.*, with respect to individual rights conferred on Petitioners Vincent Bennett and all others similarly situated by those Pennsylvania laws and regulations, as found by the United States Court of Appeals for the Third Circuit?

3. Does the *Railway Labor Act*, 45 U.S.C. 151, *et seq.*, have greater preemptive force than the *National Labor Relations Act*, 29 U.S.C. 151, *et seq.*, and the *Labor Management Relations Act*, 29 U.S.C. 185 as found by the United States Court of Appeals for the Third Circuit?

LIST OF PARTIES

The parties to the proceedings below and to this Petition are petitioners Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes (hereinafter referred to as "Pennsylvania Federation"), a railroad union, and Vincent Bennett, individually and on behalf of all others similarly situated, a resident of the state of Pennsylvania employed by the National Railroad Passenger Corporation and a member of the Pennsylvania Federation.

The respondent to the proceedings below and to this Petition is the National Railroad Passenger Corporation (hereinafter referred to as "Amtrak").

Petitioners have no parent companies, subsidiaries or affiliates to list pursuant to Rule 28.1.

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PENNSYLVANIA FEDERATION OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES and VINCENT BENNETT, individually and on behalf of all others similarly situated,

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PETITION FOR A WRIT OF CERTIORARI

The petitioners, Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes and Vincent Bennett, individually and on behalf of all others similarly situated, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit, entered in the above-entitled proceeding on March 18, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is reported at 142 LRRM 2861 and is reprinted in the appendix hereto, pp. 1a-9a, *infra*.

The memorandum decision and order of the United States District Court for the Eastern District of Pennsylvania (Yohn, D.J.) has not been reported. It is reprinted in the appendix hereto, pp. 10a-17a, *infra*.

JURISDICTION

Petitioners filed this case in the Philadelphia County Court of Common Pleas. Amtrak removed the case to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. 1349 and 1441. On June 15, 1992 the Eastern District granted Amtrak's motion to dismiss and denied petitioners' motion for summary judgment as moot.

On petitioners' appeal, the Third Circuit on March 18, 1993, entered a judgment and an opinion affirming the Eastern District's order. No petition for rehearing was sought.

The jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The status involved in this appeal include the *Railway Labor Act*, 45 U.S.C. 151, *et seq.*, the *National Labor Relations Act*, 29 U.S.C. 151, *et seq.*, the *Labor Management Relations Act*, 29 U.S.C. 185, the *Pennsylvania Minimum Wage Law*, 43 P.S. 333.104(c), the *Pennsylvania Wage Payment and Collection Law*, 43 P.S. 260.1, *et seq.*, Pennsylvania Public Law 909 No. 173 and the regulation interpreting the Pennsylvania Minimum Wage Law, 34 Pa. Code 231.1.

STATEMENT OF THE CASE

Petitioner Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes (hereinafter referred to as "Pennsylvania Federation") is a railroad union representing, among others, members of the maintenance of way department of respondent National Railroad Passen-

ger Corporation (hereinafter referred to as "Amtrak") who reside and work in Pennsylvania. Petitioner Vincent Bennett (hereinafter referred to as "VB") is a maintenance of way employee of Amtrak who resides and works in Pennsylvania. The part of the maintenance of way department over which the Pennsylvania Federation has jurisdiction constructs and maintains the track, bridges and buildings on Amtrak. They also repair track equipment and construct and maintain Amtrak's electric catenary system. Respondent Amtrak is a intercity passenger railroad partially funded by the government of the United States.

The state of Pennsylvania has a minimum wage law which guarantees workers in Pennsylvania a minimum of time and one half pay for all time they work beyond 40 hours. 43 P.S. 333.104(c). The Pennsylvania Department of Labor's duly promulgated regulations define this. At 34 Pa. Code 231.1 the defining regulation states:

> *Hours worked*—Including all time during which an employee is required by the employer to be on the premises of the employer, to be on duty, or to be at the prescribed work place, all time spent in traveling as part of the duties of the employee during normal working hours, and all time during which an employee is employed or permitted to work: provided, however, that time spent on the premises of the employer for the convenience of the employee shall be excluded.

The parties stipulated that under the terms of the collective bargaining agreement, employees of Amtrak who are required to travel to their headquarters or camp car lodging facilities from the work site on company supplied vehicles after 40 hours are paid at straight time rate for the time they travel from the jobsite to their headquarters or camp car lodging facilities, not at time and one half. Under both the *Pennsylvania Minimum Wage Act*, 43 P.S. 333.104(c), *et seq.* and the *Pennsylvania Wage Payment and Collection Law*, 43 P.S. 260.1, *et seq.*, pri-

vate agreements which waive any of the rights guaranteed by the laws are proscribed. The *Pennsylvania Wage Payment and Collection Law* at 260.7 states:

> ". . . no provisions of this Act shall in any way be contravened or set aside by private agreement."

And the *Pennsylvania Minimum Wage Act*, at 333.16 states:

> "Any agreement between the employer and the worker to work for less than such minmium wage shall be no defense to [such] action."

Prior to 1978 railroad workers were exempt from the provisions of the *Pennsylvania Minimum Wage Act.* 43 P.S. 331(p), Public Law 917 16. In 1978, this was repealed and the Pennsylvania State Legislature brought railroad employees under the coverage of the *Pennsylvania Minimum Wage Act.* Public Law 909, No. 173.

During negotiations the Pennsylvania Federation, pursuant to a provision of the *Pennsylvania Wage Payment and Collection Law*, brought suit against Amtrak in Philadelphia County Common Court of Pleas to recover half time pay plus other damages for all residents of Pennsylvania working in the portion of Amtrak's maintenance of way department over which the Pennsylvania Federation had jurisdiction who were paid straight time pay for required work-related travel based upon the two Pennsylvania wage laws and the Pennsylvania Code. Specifically 260.9(a) of the *Pennsylvania Wage Payment and Collection Law* permits the union to sue an employer in behalf of its members to enforce members' rights under the *Pennsylvania Minimum Wage Act.* Petitioner Vincent Bennett joined the suit and sued in his behalf and behalf of all others similarly situated pursuant to 260.9(b) of the *Pennsylvania Wage Payment and Collection Law* which permits such causes of action.

Respondent Amtrak removed the case to the United States District Court for the Eastern District of Pennsyl-

vania. The parties stipulated to the facts. See Appendix, pp. 18a-21a. Respondent Amtrak moved to dismiss and Petitioners moved for summary judgment. Judge Yohn ruled that the Pennsylvania Federation's cause of action was preempted by the *Railway Labor Act* because it was necessary to interpret the collective bargaining agreement in order determine what the terms "hours worked" and "travel time" mean and was, therefore, a "minor dispute". Judge Yohn stated:

> Stated simply, whether the employees on behalf of whom this suit has been commenced are entitled to overtime compensation for time spent traveling back to their base camps or headquarters locations upon completion of their tours of duty requires an interpretation of the terms of the collective bargaining agreement. By relying on the plain language of the state regulation for a definition of "hours worked" for purposes of determining eligibility for overtime, plaintiffs apparently failed to note that travel time is included within that definition only if it is "part of the duties of the employee during normal working hours." 34 Pa. Code 231.1. Surely plaintiffs do not mean to suggest that the question of whether travel time at issue in this case qualifies as part of the duties of the employee or whether such travel is undertaken during the established normal working hours can be determined without reference to the terms of the collective bargaining agreement.

And as "minor disputes" are under the exclusive jurisdiction of an arbitration panel pursuant to the *Railway Labor Act, Andrews v. Louisville & Nashville Ry. Co.*, 406 U.S. 320 (1972); *Consolidated Rail Corporation v. Railway Labor Executives' Association*, 491 U.S. 299 (1989), Judge Yohn reasoned that plaintiffs' causes of action were preempted by the *Railway Labor Act*.

The Third Circuit agreed with Judge Yohn and even went further, as pointed out by Judge Lewis in his concurring opinion. The Third Circuit stated, at 142 LRRM 2863:

In the district court, BMWE and Bennett apparently argued that the time spent traveling back to the campcars or headquarters fell under the "all time spent in traveling as part of the duties of the employe[e] during normal working hours" provision of the Pennsylvania regulation. However, as the district court correctly noted, it is impossible to determine whether this travel time is "part of the duties of the employe[e]" without interpreting the collective bargaining agreemnt to see exactly what the duties of the employees are. Cf. *O'Brien v. Consolidated Rail Corporation*, 972 F.2d 1, 5 [140 LRRM 3014] (1st Cir. 1992) (holding that state law antidiscrimination claim was preempted by Railway Labor Act because claim required interpretation of the collective bargaining agreement to determine whether employee could perform duties of position he was seeking), *cert. denied*, 113 S. Ct. 980 [142 LRRM 2864] (1993). Similarly, as the district court also noted, it is impossible to determine whether the travel is undertaken "during normal working hours" without interpreting the collective bargaining agreement.

On appeal, BMWE and Bennett also argue that the first clause of the regulation covers their situation. Yet, once again, in order to determine whether the workers are "*required by the employer* to be on the premises of the employer, to be on duty, or to be at the prescribed work place" during time spent traveling, we would have to interpret the collective bargaining agreement. For example, a worker living near a job site might be able to go directly home instead of going on an AMTRAK vehicle back to headquarters. Similarly, if a job site were near the place of employment of a worker's spouse, the spouse might be able to pick up the worker on the way home. The only way to determine whether such arrangements would be permissible is to look to the collective bargaining agreement. In other words, only an interpretation of the collective bargaining agreement can tell us if these AMTRAK employees are *required* to travel on the AMTRAK vehicles after their work

shifts are done. Thus, contrary to the assertions of BMWE and Bennett, their dispute with AMTRAK cannot be resolved solely by reference to state law. Rather, resolution of their state-law claims requires that we ascertain the meaning of the collective bargaining agreement. Accordingly, arbitration of the appellants' claims is mandatory, and the courts are without jurisdiction to hear the dispute. In concluding, we stress that our decision does not address the merits of the dispute between BMWE and AMTRAK; rather, it only states which forum can hear the dispute.[8]

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[8] Appellants argue that their claims should be treated separately because BMWE is suing on behalf of its members, while Bennett is suing as an individual. We see no merit to this contention which in any event may not be factually accurate as Bennett has sought to sue as a representative "of himself and all other similarly situated employees." While it is true that the Pennsylvania Wage Payment and Collection Law gives both unions and individual employees the right to institute a suit for wages, see Pa. Stat. Ann. tit. 43 § 260.9a, this fact is not significant because both are bound by the collective bargaining agreement and both could escape the confines of mandatory arbitration only if their state-law claims can be proven without resorting to an interpretation of the collective bargaining agreement.

Additionally, the Third Circuit, in applying this Court's doctrine set forth in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988) (state-law claims that can be resolved without interpreting a collective bargaining agreement are not preempted by the Labor Management Relations Act even when those state-law claims involve identical facts to those upon which a collective bargaining agreement grievance or claim can be based) noted in footnote 7 of the opinion:

> We realize that *Lingle* involved a claim of preemption under the Labor Management Relations Act, and not the Railway Labor Act; however, this difference is not significant in our case because if anything preemption is broader under the Railway Labor Act. See *Andrews*, 406 U.S. at 323; *Grote v. Trans*

World Airline, Inc., 905 F.2d 1307, 1309-1310 (9th Cir.), *cert. denied*, 111 S.Ct. 386.

This was challenged by Judge Lewis in his concurring opinion. Judge Lewis stated:

> I join the court's opinion except insofar as its analysis does not expressly distinguish between interpreting or construing a collective bargaining agreement, on the one hand, and merely referring to it on the other, in the context of the appropriateness of Railway Labor Act preemption.
>
> To give meaning to the terms "interpret" or "construe," the court broadens beyond necessity the parameters of RLA preemption. While the court correctly concludes that Rule 63 and other provisions of the collective bargaining agreement must be interpreted to determine what was intended by "part of the duties" of the employee, I do not believe that any construction or interpretation is necessary with regard to the question of whether an employee's travel is undertaken "during normal working hours;" I think that is made abundantly clear by a quick reference to Rule 63. Accordingly, I would have taken the opportunity in this case to clarify that a need merely to refer to the collective bargaining agreement should not necessarily invoke *Lingle v. Norge Division, Magic Chef, Inc.*, 486 U.S. 399 [128 LRRM 2521] (1988), and invite preemption.
>
> In my view, the distinction is significant. For example, if mere reference were enough to invalidate a state law, then all state minimum labor standards could be rendered invalid as applied to union situations. This, of course is contrary to established precedent. At a minimum, in fact, the Supreme Court has recognized that an exception to bargaining agreement preemption exists for state minimum labor standards. See *Metropolitan Life Ins. v. Massachusetts*, 471 U.S. [724], 741, 755-56 [119 LRRM 2569] (1985); *Malone v. White Motor Corp.*, 435 U.S. 497 [97 LRRM 3147] (1978). Indeed, an em-

ployer or union could exempt itself from any state law by including contrary terms in a collective bargaining agreement. Thus, my concern is that the majority's analysis might lend itself to insulating entirely from judicial review the contents of a collective bargaining agreement.

Petitioners contend that under Pennsylvania state law, the parties are proscribed from entering into a collective bargaining (or any) agreement which in any way diminishes the protections of the *Pennsylvania Minimum Wage Act*. Petitioners further contend that no interpretation of the collective bargaining agreement is necessary in order to determine if respondent violated the *Pennsylvania Minimum Wage Act*. All that is necessary is for the parties to review the pay records of the members of the Pennsylvania Federation who live and/or worked in Pennsylvania to determine how many were paid straight time rate beyond 40 hours in any work week. If Amtrak paid any employee who is represented by the Pennsylvania Federation more than 40 hours at straight time rate in a work week, it violated the *Pennsylvania Minimum Wage Act* and must pay the appropriate damages. Petitioners contend that the question is not how the collective bargaining agreement defines "travel time" or "normal working hours" or "required to work". The question is whether Amtrak complied with Pennsylvania law. All that is necessary is to look at the wage rates Amtrak employees were paid in order to determine the appropriate amount of damages for each employee. If the employee(s) continued to receive his/her (their) straight time rate after 40 hours, s/he (they are) is entitled to recovery.

Additionally, with respect to petitioner VB and all other similarly situated, petitioners contend that the rights conferred upon them by the *Pennsylvania Minimum Wage Act* and the *Pennsylvania Wage Payment and Collection Law* are *individual* rights which the Union and AMTRAK have no right to waive, not only under Pennsylvania law, but also under well established Supreme Court prece-

dent. Such rights are a legitimate exercise of state police powers and are independent of the collective bargaining process. *Metropolitan Life Ins. Co. v. Massachusetts*, 105 S.Ct. 2380, 2387 (1985); *Barrentine v. Arkansas-Best Freight System, Inc.*, 101 S.Ct. 1437, at 1447 (1981); *Terminal Railroad Association v. Railroad Trainmen*, 63 S.Ct. 420, at 423 (1943).[1] And in *Allis-Chalmers v. Lueck*, 105 S.Ct. 1904 (1985), this Court held that unions and employers do not have the power to exempt themselves from whatever state labor standards they disfavor. This Court found that it would be inconsistent with congressional intent to preempt state rules that proscribe conduct, or establish rights and obligations independent of a labor contract.

REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT BETWEEN THE CIRCUITS AS TO WHETHER THE *RAILWAY LABOR ACT* HAS GREATER PREEMPTIVE FORCE THAN THE *LABOR MANAGEMENT RELATIONS ACT* AND THE *NATIONAL LABOR RELATIONS ACT* AND WHETHER THIS COURT'S DECISIONS IN *LINGLE v. NORGE DIVISION OF MAGIC CHEF, INC., METROPOLITAN LIFE INSURANCE CO. v. MASSACHUSETTS, ALLIS-CHALMERS v. LUECK* AND *FORT HALIFAX v. COYNE*, 107 S.Ct. 2211 (1987) ARE APPLICABLE IN A *RAILWAY LABOR ACT* SETTING.

Over the past decade, this Court has issued several major decisions regarding the interplay of the preemption doctrine and state law in a labor setting culminating in *Lingle*. In *Metropolitan Life Insurance Co. v. Massachusetts*, this Court held that the *National Labor Relations Act* did not preempt a Massachusetts law that required certain minimum health care benefits be provided a Massa-

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[1] *Terminal Railroad Association v. Railroad Trainmen* is a Railway Labor Act case and is favorably cited by this Court in *Metropolitan Life v. Massachusetts*. It is cited for the proposition that the *Railway Labor Act* does not preempt all state law.

chusetts resident who is insured under a general health insurance policy or employee health-care plan that covers hospital and surgical expenses, even though the health care plan resulted from collective bargaining. The Court found that states have, under their broad police powers, the right to pass statutes that confer rights on employees that go beyond a collective bargaining agreement and that such statutes were not preempted by the *National Labor Relations Act*. (Among the examples of such rights were *Minimum and other wage laws. Met. Life,* at 2398.)

In *Allis-Chalmers v. Lueck* this Court found that unions and employers do not have the right ot waive rights conferred upon employees by state law. And in *Fort Halifax v. Coyne* this Court found at 2223:

> —Thus, the mere fact that a state statute pertains to matters over which the parties are free to bargain cannot support a claim of preemption, for "there is nothing in the NLRA . . . which expressly forecloses all state regulatory power with respect to those issues . . . that may be the subject of collective bargaining." *Malone v. White Motor Corp.,* 435 U.S. 497, 504-505 (1978).

This Court then stated:

> We therefore find that Maine's severance payment law is "a valid and unexceptional exercise of the [State] police power." *Metropolitan Life,* 105 S.Ct. at 2398-2399. Since "Congress developed the framework for self-organization and collective bargaining of the NLRA within the larger body of state law promoting public health and safety," *id.*, at 2398, the Maine statute is not preempted by the NLRA.

In *Lingle* this Court found that so long as interpretation of a collective bargaining agreement is not necessary to resolve a state-law claim, that state-law claim is not preempted by the *Labor Management Relations Act,* even when a collective bargaining grievance can be based upon the identical facts upon which the state-law claim is based.

Despite these decisions, two Circuit Courts of Appeals, the Fourth Circuit and the Ninth Circuit, have found that

the *Railway Labor Act* has greater preemptive force than the *National Labor Relations Act* and the *Labor Management Relations Act* and that this Court's decision in *Lingle* is inapplicable in a *Railway Labor Act* setting. Additionally, the Third Circuit, as noted *supra,* appears to have adopted a position in the instant case that the *Railway Labor Act* has greater preemptive force than the *National Labor Relations Act* and the *Labor Management Relations Act.* In *Lorenz v. CSX,* 141 LRRM 2921 (4th Cir. 1992) the Fourth Circuit, at 2924, states:

> The dissent cites, and relies heavily on, *Lingle v. Norge Division of Magic Chef, Inc.,* 486 U.S. 399 (1988), for the proposition that a state-law suit is preempted only if the action requires interpretation of the collective bargaining agreement. The *Lingle* decision, however, was based upon preemption under the National Labor Relations Act (NLRA). At least since *Elgin, Joliet & Eastern R. Co. v. Burley,* 325 U.S. 711 (1945), the Court has clearly recognized that preemption under the RLA is more pervasive.— The circuit courts that have considered Lingle in light of the RLA declined to extend its analysis beyond the NLRA context. *Hubbard v. United Airlines, Inc.,* 927 F.2d 1094, 1097 (9th Cir. 1991); *Smolarek v. Chrysler Corp.* 879 F.2d 1326, 1335 n.4, *cert. denied.,* 493 U.S. 992 (1989).

The Ninth Circuit, in *Grote v. Transworld Airlines,* 905 F.2d 1307 [134 LRRM 2583] (9th Cir. 1990) held that the legislative differences between the LMRA and the RLA mean that the RLA has greater preemptive force than the LMRA. As in the *Lorenz* case the Ninth Circuit found that *Lingle* analysis cannot be applied to a *Railway Labor Act* setting. The Ninth Circuit states at 134 LRRM 2584:

> Grote cites *Lingle v. Norge Div. of Magic Chef, Inc.,* 486 U.S. 399 [128 LRRM 2521 (1988), in support of his argument that he can seek a state law remedy as long as it is "independent of the collective

bargaining agreement." *Id.* at 407. The Court in *Lingle* held that, even though § 301 of the *Labor Management Relations Act* (LMRA) preempts state law claims arising under collective bargaining agreements, a state claim independent of the agreement could be made. *Lingle,* 486 U.S. at 407. *Lingle,* however, is inapposite because it deals with preemption under § 301 of the LMRA, 29 U.S.C. 185.

The preemption created under the RLA and that arising under § 301 of the LMRA are not analogous. The RLA dispute resolution provisions were enacted specifically "to *avoid any interruption* to commerce or to the operation of any carrier engaged therein; . . . to provide for the *prompt and orderly* settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. 45 U.S.C. 151a (emphasis added). In drafting this section of the RLA, Congress made clear its interest in keeping railroad labor disputes simple and out of the often lengthy court process.

Section 301 of the LMRA, on the other hand, merely states that "suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States." 29 U.S.C. 185(a) (1982). On its face, 301 creates concurrent state and federal jurisdiction over specified labor disputes.—It was not until the Supreme Court's decision in *Teamsters v. Lucas Flour Co.,* 369 U.S. 95 (1962), that § 301 was interpreted as barring state law claims. *Id.* at 103. Therefore, because the RLA's preemptive force appears on the face of the statute and § 301 preemption is judicially imposed, we conclude that preemption under the RLA is broader than § 301. Grote's analogy to *Lingle,* which discusses an exception to § 301 preemption, is therefore unpersuasive.

The decisions of the Fourth and Ninth Circuits in *Lorenz* and *Grote* respectively conflict with the decisions

of most of the other circuits that have considered hte matter. In some instances the circuits apply the *Lingle* doctrine. And in *Davies v. American Airlines,* 140 LRRM 2893 (10th Cir. 1992), the Tenth Circuit, in note 5 specifically rejected the reasoning of the Ninth Circuit in *Grote.* Although *Lorenz* had not been decided at the time the Tenth Circuit issued its decision in *Davies,* it is clear there is a conflict between the line of reasoning set forth in *Lorenz* and the line of reasoning set forth in *Davies.* In *Davies,* the Tenth Circuit stated in n.7, 140 LRRM 2983, 2989:

> Although the Ninth Circuit held that the statutory, as opposed to contractual, origin of the RLA affects the inquiry into whether a claim requires CBA interpretation, *Grote v. Transworld Airlines,* 905 F.2d 1307, 1309-1310 (9th Cir.) *cert. denied,* 111 S.Ct. 386 (1990), we respectfully disagree with the reasoning of that case.

And at 2988-2989 the Tenth Circuit states:

> American urges that *Lingle,* which dealt with the LMRA, is inapposite in the RLA context. However, we believe that the test articulated by *Lingle* for determining whether a dispute requires CBA interpretation is just as valid under the RLA as it is under the LMRA.

Other circuits which have applied the *Lingle* doctrine to *Railway Labor Act* cases include: (a) the First Circuit, *O'Brien v. Consolidated Rail Corporation,* 140 LRRM 3014 (1st Cir. 1992) (state law against discrimination against handicapped preempted by RLA because collective bargaining agreement must be interpreted in order to determine who is physically qualified to perform duties of job); (b) the Third Circuit in the instant case; (c) the Sixth Circuit, *Beard v. Carrollton R.R.,* 893 F.2d 117, 122 (6th Cir. 1989) (distinguishing *Lingle*); (d) the Seventh Circuit, *Leu v. Norfolk & W. Ry.,* 820 F.2d 825, 830 (7th Cir. 1987) (the "reasoning [of a pre-Lingle LMRA case] is equally applicable to the de-

termination of whether a claim couched in terms of a state tort law actually arises under an RLA collective bargaining agreement."); and (e) the Eighth Circuit, *Deford v. Soo Line R.R.*, 867 F.2d 1080, 1087 (8th Cir.), *cert. denied*, 492 U.S. 927 (1989) (distinguishing *Lingle*).

This conflict in circuits has created a lack of uniformity in the application of *Lingle* to *Railway Labor Act* cases. In the instant case, despite the facts that: (a) state wage laws are involved; (b) these laws specifically forbid private agreements that lessen the rights conferred upon workers under those wage laws; (c) railroad workers were specifically included under the scope of the applicable Pennsylvania wage laws; (d) this court's decisions in *Metropolitan Life v. Massachusetts*, 105 S.Ct. 2380, 2398 and *De Canas v. Bica*, 96 S.Ct. 933, 937 (1976) exempt wage laws and other minimum labor standards from preemption under the NLRA; and (e) *Metropolitan Life*, in support of its reasoning that certain minimal labor standards were not preempted, quoted a *Railway Labor Act* case, *Terminal Railroad Association v. Railroad Trainmen*, 63 S.Ct. 420, 423 (1943) at 2399 which stated: "—We hold that the enactment by Congress of the Railway Labor Act was not a preemption of the field of regulating working conditions themselves and did not preclude the State . . . from making the order in question."; the district court and the Third Circuit found the Pennsylvania wage laws to be preempted because they required an interpretation of the collective bargaining agreement. The collective bargaining agreement is a private agreement which, in the instant case, diminishes rights of petitioners to time and one half pay for hours worked and paid for after 40 hours if petitioners are traveling from the work site to their headquarters or camp cars. It is clear from the Third Circuit decision that at least one of its suppositions in rendering this opinion implicates directly the precise area where the conflict in circuits exists—that the RLA has greater preemptive force than the LMRA or NLRA.

A principal purpose for which the United States Supreme Court uses certiorari jurisdiction is to resolve conflicts among Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law. *Braxton v. U.S.*, 111 S.Ct. 1854, 1857 (1991). Since this Court's decisions in *Metropolitan Life, Fort Halifax, Allis-Chalmers* and *Lingle,* conflict has developed among the lower courts in the application of the preemption doctrine to *Railway Labor Act* settings. This conflict resulted in a decision in the instant case which petitioners believe to be at odds with the decisions of this court and which has served to deny petitioners rights to which they are entitled under Pennsylvania law. It is critical that this conflict between the circuits be resolved.

II. THE DECISION OF THE THIRD CIRCUIT IN THE INSTANT CASE SANCTIONS A DEPARTURE BY THE DISTRICT COURT FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND REQUIRES AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

As noted *supra,* the decisions of this Court regarding preemption give clear guidance as to the application of *Lingle* to state wage laws. And the Pennsylvania wage laws and regulations are clear as to what employers must do in order to remain in compliance with them. It is clear that *Metropolitan Life* and *De Canas* exempt state wage laws from preemption, even under the *Railway Labor Act* and those cases, together with *Fort Halifax,* grant states the authority, under their broad police powers, to pass laws such as the Pennsylvania wage laws requiring even *Railway Labor Act*-covered railroads to pay time and one half after 40 hours so long as employees are working and still under pay by the railroad. Additionally, the Pennsylvania Supreme Court in *B & O Railroad Company v. Commonwealth Department of Labor and Industry,* 334 A.2d 636 (1975) found that Pennsylvania minimal employment standards are not preempted

by the *Railway Labor Act.* In *B & O,* a Pennsylvania statute requiring employers to pay their employees every week was challenged by the B & O as preempted by the RLA. In rejecting the B & O's position, the Pennsylvania Supreme Court adopted the reasoning of *Terminal Railroad* at 641, stating: "the principal that the *Railway Labor Act* does not preclude a state from regulating the working conditions of railway employees was established in the first case to consider the preemptive effect of that Act."

The decision of the Third Circuit in the instant case directs the lower courts to ignore state minimum labor protections and wage laws in direct contradiction to *Metropolitan Life* and *De Canas.* The Pennsylvania statutes and regulations establish definitions of the terms involved and the Pennsylvania courts are where those definitions need to be interpreted. It is the State of Pennsylvania which should enforce its minimum labor protections and those protections, according to the decisions of this Court and according to the Pennsylvania courts and the applicable statutes, cannot be altered by private agreements. Otherwise, as this Court opined in *Allis-Chalmers,* unions and companies could make agreements choosing which minimal protections to honor and which to ignore. As this Court stated in *Allis Chalmers,* 105 S.Ct. 1904, 1911-1912 (1985):

> "Clearly § 301 does not grant the parties to a collective-bargaining-agreement the ability to contract for what is illegal under state law. In extending the preemptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract."

Additionally, this Court stated in *Metropolitan Life,* 105 S.Ct. 2380, 2397:

> "It would turn the policy that animated the Wagner Act on its head to understand it to have penalized

> workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employees."

The rights of petitioners Bennett and all others similarly situated were abridged separate and apart from the rights of petitioner Pennsylvania Federation. The rights which flow to them under the Pennsylvania wage statutes are individual in nature, separate and apart from the collective bargaining process. As this Court noted in *Metropolitan Life* at 2397:

> Unlike the NLRA, mandated-benefit laws are not laws designed to encourage or discourage employees in the promotion of their interests collectively; rather, they are in part "designed to give specific minimum protection to *individual* workers and to ensure that *each* employee covered by the Act would receive" the mandated health insurance coverage. *Barrentine*, 450 U.S. at 739 (emphasis in original). Nor do these laws even inadvertently affect these interests implicated in the NLRA. Rather, they are minimum standards "independent of the collective-bargaining process [that] devolve on [employees] as individual workers, not as members of a collective organization." *Id.*, at 745.

The decision of the Third Circuit in the instant case simultaneously permits the union and the company to "contract for what is illegal under state law", prevents unionized employees of railroads "from benefiting from state labor regulations imposing minimal standards on nonunion employees", and specifically holds that the individual rights of petitioners Vincen Bennett and all others similarly situated arise from the collective bargaining agreement. If this decision of the Third Circuit is permitted to stand, it sanctions a departure by the district court from the accepted and usual course of judicial proceedings. Therefore it requires an exercise of this Court's power of supervision.

CONCLUSION

For these various reasons, petitioners respectfully submit that this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

Filed March 18, 1993

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-1577

PENNSYLVANIA FEDERATION OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, by its Trustee ad litem TED DODD; VINCENT BENNETT, on behalf of himself and all other similarly situated employees

v.

NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK")

PENNSYLVANIA FEDERATION of the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES and VINCENT BENNETT,
Appellants

On Appeal from the United States
District Court for the
Eastern District of Pennsylvania
(D.C. Civ. No. 91-2776)

Argued January 26, 1993

BEFORE: GREENBERG, ROTH, and LEWIS, *Circuit Judges*

(Filed: March 18, 1993)

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OPINION OF THE COURT

GREENBERG, *Circuit Judge.*

I. *BACKGROUND*

Appellants Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees (BMWE) and Vincent Bennett, a member of BMWE, initiated this action pursuant to the Pennsylvania Minimum Wage Act, Pa. Stat. Ann. tit. 43, §§ 333.101 to .115 (1992), against appellee National Railroad Passenger Corporation (AMTRAK) in the Philadelphia County Court of Common Pleas.[1] AMTRAK removed the case to the United

[1] We note that the same union unsuccessfully brought a similar action in New Jersey state court against Conrail. *See Brotherhood of Maintenance of Way Employees v. Consolidated Rail Corp.,*

States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1349 [2] and 1441. The parties then stipulated to the facts and filed dispositive motions. AMTRAK moved to dismiss the case, arguing that the district court lacked subject matter jurisdiction because this case was a "minor dispute" requiring an interpretation of its collective bargaining agreement with BMWE, and therefore the National Railroad Adjustment Board had exclusive jurisdiction pursuant to the Railway Labor Act. 45 U.S.C. § 153 First (i). By an order entered June 15, 1992, the district court granted AMTRAK's motion to dismiss and denied appellants' motion for summary judgment as moot. Because we agree with the district court's reasoning and result, we will affirm.[3]

BMWE and AMTRAK are parties to a currently effective collective bargaining agreement. BMWE represents, among others, AMTRAK employees who construct and maintain AMTRAK's tracks, bridges, and facilities. According to the collective bargaining agreement, AMTRAK may assign certain workers in its Track and Bridge and Building Department to camp cars [4] or head-

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Docket L-1902-89 (N.J. Super. Jan. 25, 1991), *aff'd*, No. A-3255-90T5 (N.J. App. Div. Jan. 28, 1992).

[2] AMTRAK was created by an Act of Congress, and the United States government owns more than 50% of AMTRAK's capital stock.

[3] Inasmuch as we are reviewing an order granting a motion to dismiss, we exercise plenary review. We note, however, that the district court considered the parties' stipulation of facts in granting AMTRAK's motion to dismiss. While this procedure may in effect have converted the motion to dismiss into a motion for summary judgment, this possibility would not change our scope of review. Of course, the parties do not suggest that there were any facts in dispute which required resolution at an evidentiary hearing.

[4] Camp cars are railroad cars that have sleeping, eating, and sanitary facilities.

quarters and transport these workers on AMTRAK vehicles from these bases to job sites and back. Pursuant to Rule 63 of the collective bargaining agreement.[5] AMTRAK pays these employees straight-time pay for travel time falling outside the normal 40-hour work week.[6]

BMWE and Bennett contend that this travel compensation scheme violates Pennsylvania's minimum wage law, Pa. Stat. Ann. tit. 43, § 333.104(c), because it does not provide for overtime pay for the return travel time. Under Pennsylvania law employers are required to pay employees overtime (not less than time and a half) for all hours worked in excess of 40 hours per week. A Pennsylvania regulation, codified at 34 Pa. Code § 231.1, defines "hours worked" as:

> all time during which an employe[e] is required by the employer to be on the premises of the employer, to be on duty, or to be at the prescribed work place, all time spent in traveling as part of the duties of the employe[e] during normal working hours, and all time during which an employe[e] is employed or

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[5] Rule 63 provides in pertinent part:

> An employe[e] waiting, or traveling by direction of AMTRAK by passenger train, motor car, or any other method of transportation, will be allowed straight time for actual time waiting and/or traveling during or outside of the regularly assigned hours, except:
>
> (a) When employe[e]s regularly assigned to camp cars, travel in such cars, they shall be allowed straight time.

[6] An example annexed to Rule 63 demonstrates the application of the agreement. If an employee's normal shift were from 7 a.m. to 4 p.m. (8 hours excluding lunch), and he got on an AMTRAK train to go to the job site at 7 a.m. (arriving at 8 a.m.) and returned to headquarters on an AMTRAK train at 6 p.m. (leaving at 5 p.m.) the collective bargaining agreement would require that the employee be paid 8 hours of straight-time pay for the normal work day, 7 a.m. to 4 p.m.; 1 hour of time-and-half pay for 4 p.m. to 5 p.m. and 1 hour of straight-time pay for 5 p.m. to 6 p.m. (the time traveling).

> permitted to work; provided, however, that time allowed for meals shall be excluded unless the employe[e] is required or permitted to work during that time, and provided further, that time spent on the premises of the employer for the convenience of the employe[e] shall be excluded.

According to BMWE and Bennett, a simple construction of the Pennsylvania statute and regulation will vindicate their right to overtime pay. Therefore, they did not feel bound to submit their claims to the grievance process outlined in the collective bargaining agreement.

II. *DISCUSSION*

In enacting the Railway Labor Act, Congress sought "to promote stability in labor-management relations in this important national industry by providing effective and efficient remedies for the resolution of railroad-employee disputes arising out of the interpretation of collective-bargaining agreements." *Union Pacific R.R. v. Sheehan*, 439 U.S. 89, 94, 99 S.Ct. 399, 402 (1978). Accordingly, Congress created the National Railroad Adjustment Board to hear disputes regarding rates of pay, essential to keep so-called "minor disputes" out of the courts and in arbitration. *Id.* Therefore, the Railway Labor Act *requires* submission of minor disputes to arbitration. *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, 491 U.S. 299, 303, 109 S.Ct. 2477, 2480 (1989); *Andrews v. Louisville & N.R.R.*, 406 U.S. 320, 322, 92 S.Ct. 1562, 1564 (1992).

However, at the same time, Congress in enacting the Railway Labor Act did not intend to preempt states from exercising their police powers to regulate minimum working conditions. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 757 n.32, 105 S.Ct. 2380, 2398 n.32 (1985) (citing *Terminal R.R. Ass'n v. Railroad Trainmen*, 318 U.S. 1, 6-7, 63 S.Ct. 420, 423 (1943)). Thus, BMWE and Bennett seek to avoid mandatory arbitration by bringing their claims under state law. Yet,

the mere assertion of an independent state-law claim does not enable a party to avoid arbitration, otherwise compelled by the Railway Labor Act, because "if the resolution of [that] state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted." *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-06, 108 S.Ct. 1877, 1881, (1988) (relying on *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 82 S.Ct. 571 (1962) and *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S.Ct. 1904 (1985)).[7] Aware of this case law, BMWE and Bennett argue that we can resolve this dispute merely by construing Pennsylvania law, particularly the term "hours worked" as defined in 34 Pa. Code § 231.1.

In the district court, BMWE and Bennett apparently argued that the time spent traveling back to the camp cars or headquarters fell under the "all time spent in traveling as part of the duties of the employe[e] during normal working hours" provision of the Pennsylvania regulation. However, as the district court correctly noted, it is impossible to determine whether this travel time is "part of the duties of the employe[e]" without interpreting the collective bargaining agreement to see exactly what the duties of the employees are. *Cf. O'Brien v. Consolidated Rail Corp.*, 972 F.2d 1, 5 (1st Cir. 1992) (holding that state law antidiscrimination claim was preempted by Railway Labor Act because claim required interpretation of the collective bargaining agreement to determine whether employee could perform duties of position he was seeking), *cert. denied*, 113 S.Ct. 980 (1993). Similarly, as the district court also noted, it is impossible to determine whether the travel is undertaken "during nor-

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[7] We realize that *Lingle* involved a claim preemption under the Labor Management Relations Act, and not the Railway Labor Act; however, this difference is not significant in our case because if anything preemption is broader under the Railway Labor Act. *See Andrews*, 406 U.S. at 323, 92 S.Ct. at 1565; *Grote v. Trans World Airlines, Inc.*, 905 F.2d 1307, 1309-10 (9th Cir.), *cert. denied*, 111 S.Ct. 386 (1990).

mal working hours" without interpreting the collective bargaining agreement to ascertain the normal working hours.

On appeal, BMWE and Bennett also argue that the first clause of the regulation covers their situation. Yet, once again, in order to determine whether the workers are "*required by the employer* to be on the premises of the employer, to be on duty, or to be at the prescribed work place" during the time spent traveling, we would have to interpret the collective bargaining agreement. For example, a worker living near a job site might be able to go directly home instead of going on an AMTRAK vehicle back to headquarters. Similarly, if a job site were near the place of employment of a worker's spouse, the spouse might be able to pick up the worker on the way home. The only way to determine whether such arrangements would be permissible is to look to the collective bargaining agreement. In other words, only an interpretation of the collective bargaining agreement can tell us if these AMTRAK employees are *required* to travel on the AMTRAK vehicles after their work shifts are done. Thus, contrary to the assertions of BMWE and Bennett, their dispute with AMTRAK cannot be resolved solely by reference to state law. Rather, resolution of their state-law claims requires that we ascertain the meaning of the collective bargaining agreement. Accordingly, arbitration of the appellants' claims is mandatory, and the courts are without jurisdiction to hear the dispute. In concluding, we stress that our decision does not address the merits of the dispute between BMWE and AMTRAK; rather, it only states which forum can hear the dispute.[8]

The order of June 15, 1992, will be affirmed.

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[8] Appellants argue that their claims should be treated separately because BMWE is suing on behalf of its members, while Bennett is suing as an individual. We see no merit to this contention which in any event may not be factually accurate as Bennett has sought

LEWIS, *Circuit Judge*, concurring.

I join the court's opinion except insofar as its analysis does not expressly distinguish between interpreting or construing a collective bargaining agreement, on the one hand, and merely referring to it on the other, in the context of the appropriateness of Railway Labor Act preemption.

To give meaning to the terms "interpret" or "construe," the court broadens beyond necessity the parameters of RLA preemption. While the court correctly concludes that Rule 63 and other provisions of the collective bargaining agreement must be interpreted to determine what was intended by "part of the duties" of the employee, I do not believe that any construction or interpretation is necessary with regard to the question of whether an employee's travel is undertaken "during normal working hours;" I think that is made abundantly clear by a quick reference to Rule 63. Accordingly, I would have taken the opportunity in this case to clarify that a need merely to refer to the collective bargaining agreement should not necessarily invoke *Lingle v. Norge Division, Magic Chef, Inc.*, 486 U.S. 399 (1988), and invite preemption.

In my view, the distinction is significant. For example, if mere reference were enough to invalidate a state law, then all state minimum labor standards could be rendered invalid as applied to union situations. This, of course, is contrary to established precedent. At a minimum, in fact, the Supreme Court has recognized that an exception to bargaining agreement preemption exists for state min-

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to sue as a representative "of himself and all other similarly situated employees." While it is true that the Pennsylvania Wage Payment and Collection Law gives both unions and individual employees the right to institute a suit for wages due, *see* Pa. Stat. Ann. tit. 43, § 260.9a, this fact is not significant because both are bound by the collective bargaining agreeemnt and both could escape the confines of mandatory arbitration only if their state-law claims can be proven without resorting to an interpretation of the collective bargaining agreement.

imum labor standards. *See Metropolitan Life Ins. v. Massachusetts*, 471 U.S. 741, 755-56 (1985); *Malone v. White Motor Corp.*, 435 U.S. 497 (1978). Indeed, an employer or union could exempt itself from any state law by including contrary terms in a collective bargaining agreement. Thus, my concern is that the majority's analysis might lend itself to insulating entirely from judicial review the contents of a collective bargaining agreement.

My concerns aside, however, I believe the majority is correct in that resolution of the state-law claim pertaining to the duties of the employee does depend upon the meaning of the collective bargaining agreement and, accordingly, "the application of state law . . . is preempted." *Lingle*, 486 U.S. at 405-06.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action 91-2776

PENNSYLVANIA FEDERATION OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES and VINCENT BENNETT

v.

NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK")

MEMORANDUM AND ORDER

[Filed June 15, 1992]

YOHN, J. June 11, 1992

Plaintiffs commenced this action on behalf of certain employees in the defendant's Bridge and Building and Track Departments seeking payment of overtime compensation they allege is due pursuant to the provisions of Pennsylvania's Minimum Wage Act of 1968, 43 Pa. Cons. Stat. Ann. § 333.101 et seq.[1] Defendant takes the posi-

[1] The matter presently before this court bears a striking resemblance to an action recently decided by the Superior Court of New Jersey. In *Brotherhood of Maintenance of Way v. Consolidated Rail Corp.*, Docket L-1902-89 (N.J. Super. Jan. 25, 1991), the Brotherhood asserted that under New Jersey's minimum wage law camp cooks and camp car attendants should be paid time and one-half for hours worked in excess of forty hours per week as well as for time spent commuting to and from housing facilities provided by Conrail.

After hearing argument on the parties' cross-motions, the court determined that the RLA preempted the New Jersey statute and that

tion that the matter at issue in this case qualifies as a "minor dispute" under the terms of the collective bargaining agreement between the parties, a dispute over which the National Railroad Adjustment Board has exclusive jurisdiction by virtue of the Railway Labor Act ["RLA" or "the Act"], 45 U.S.C. § 153 First (i).

Now before the court are plaintiffs' motion for summary judgment and defendant's motion to dismiss or alternatively for summary judgment.[2] The parties agree that there exist no genuine issues of material fact and invite the court to dispose of this action based upon the motions. For the reasons stated herein, defendant's motion to dismiss will be granted and plaintiff's motion for summary judgment will be denied as moot.

FACTUAL BACKGROUND

Plaintiffs ["the Brotherhood"] and defendant ["AMTRAK"] are parties to a collective bargaining agreement. *See Stipulation of Facts,* Ex. A. The agreement, which establishes rates of pay, rules and working conditions, became effective on May 19, 1976. Neither party disputes that the agreement, as updated on October 1, 1987, is presently in effect.

Pursuant to the terms of the agreement, AMTRAK may assign certain employees in its Track and Bridge and Building Departments to camp cars [3] or headquarters and

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resolution of the matter in dispute required an interpretation of the collective bargaining agreement between the parties. Therefore, the court concluded, the dispute should be resolved by the National Railroad Adjustment Board.

[2] Plaintiffs did not respond to defendant's motion to dismiss or alternatively for summary judgment.

[3] Camp cars, which serve as portable housing, are converted freight cars equipped with sleeping, eating and sanitary facilities. The cars serve as portable housing for employees assigned to work on tracks or a right of way.

transport the workers on a daily basis from those bases to job sites at which their services are required for work on tracks or the abutting rights of way. The work week for such employees is established in the agreement as follows:

> Except as otherwise provided in this Agreement, AMTRAK will establish for all employe[e]s a work week of 40 hours, consisting of five (5) days of eight (8) hours each, with two consecutive days off in seven (7).

Rule 32. All time within an employee's forty hour work week is counted as "hours worked" for purposes of computing overtime pay, regardless of whether the employee is working or traveling during that time.

Employees assigned to travel to work sites from camp cars or headquarters are presently paid for time spent in transit at their regular hourly rate. Rule 63 of the agreement, which sets forth the terms governing compensation for travel time states in relevant part:

> An employe[e] waiting, or traveling by direction of AMTRAK by passenger train, motor car, or any other method of transportation, will be allowed straight time for actual time waiting and/or traveling *during or outside of the regularly assigned hours,* except:
>
> (a) When employe[e]s regularly assigned to camp cars, travel in such cars, they shall be allowed straight time.

(Emphasis added). Under the present agreement, time spent by an employee traveling back to the base location upon completion of his eight hour tour of duty is not included within the forty hour work week and, therefore, is not considered "hours worked" for purposes of computing eligibility for overtime.

The Brotherhood asserts that irrespective of the travel compensation scheme established in rule 63, a provision to which it agreed, if an employee is required to travel back to a camp car or headquarters location after completion of his tour of duty, the time spent in transit should be considered as "hours worked" for purposes of computing overtime. In fact, the Brotherhood claims, rule 63 is illegal in that it contravenes state regulations promulgated pursuant to Pennsylvania's Minimum Wage Law.

Under Pennsylvania law, an employer is required to compensate employees for overtime at a rate not less than one and one-half times the employee's regular rate. 43 Pa. Cons. Stat. Ann. § 333.104(c). Overtime is defined as "hours in excess of forty hours in a workweek." *Id.* The regulation codified at 34 Pa. Code § 231.1, defines the term "hours worked" as

> all time during which an employe[e] is required by the employer to be on the premises of the employer, to be on duty, or to be at the prescribed work place, all time spent traveling *as part of the duties of the employe*[*e*] *during normal working hours*, and all time during which an employe[e] is employed or permitted to work;

(emphasis added).

Based upon the plain language of the regulation, plaintiffs assert, it is clear that time spent traveling as part of an employee's duties constitutes "hours worked." Consequently, they reason, the facts of this case establish that time spent traveling back to camp cars or headquarters should be included in the computation of an employee's eligibility for overtime.

In addition to establishing a comprehensive scheme regulating the rates of pay, rules and working conditions, the collective bargaining agreement also provides a grievance procedure pursuant to which an employee or his

designated representative may bring a claim concerning compensation. It is undisputed that plaintiffs have not submitted the claim at issue in this case to the grievance process.

DISCUSSION

The Railway Labor Act, enacted in 1926, is designed to avoid interruption in the operation of the railroad industry and to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions. 45 U.S.C. § 151a. Under the terms of the Act, "minor disputes" respecting such matters as compensation under the terms of a collective bargaining agreement are subject to mandatory arbitration. 45 U.S.C. § 153 First (i).

Tribunals established by the Act and known as Adjustment Boards have exclusive jurisdiction over the arbitration of "minor disputes." 45 U.S.C. § 153 First (h); *Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 322 (1972). Consequently, if plaintiffs' claim can be characterized as a "minor dispute" arising under the terms of a collective bargaining agreement, the provisions of the RLA preempt state wage law and plaintiffs must look to the arbitration process as the exclusive means by which to seek redress. Under such a regime, the courts must dismiss a claim raising a "minor dispute" for lack of subject matter jurisdiction.

In *Consolidated Rail Corp. v. Railway Labor Exec. Ass'n*, 491 U.S. 299 (1989), the Supreme Court announced that a "minor dispute" is one which grows "out of grievances or out of the interpretation or application of agreements concerning the rates of pay, rules, or working conditions." *Conrail*, 491 U.S. at 303. A "minor dispute," the Court opined, arises when a collective bargaining agreement is in place and one of the parties is merely seeking to enforce its provisions. *Id.* The Court also noted that the burden the railroad bears in establish-

ing that arbitration is required under the RLA is relatively light and is satisfied if the dispute is minor and the action is arguably justified by the terms of the collective bargaining agreement. *Conrail,* 491 U.S. at 307.

Plaintiffs attempt to avoid characterization of their claim as a "minor dispute" and the resulting preemptive effect of the RLA by fashioning the complaint as an action for damages under state wage law. Even a cursory examination of the claim, however, reveals that this dispute is clearly incidental to the employment relationship between the parties and is inextricably intertwined with the collective bargaining agreement. As several courts have noted, plaintiffs cannot be permitted to employ artful pleading as a means to disguise as a state law claim what is truly a "minor dispute" under a collective bargaining agreement. *Conrail,* 491 U.S. at 306; *Boggs v. Consolidated Rail Corp.,* 112 L.R.R.M. 2295 (E.D. Pa. 1982). Based upon the factual allegations set forth in the complaint, the court concludes that plaintiffs' claim qualifies as a "minor dispute" and is, therefore, subject to the arbitration process set forth in the RLA.

Stated simply, whether the employees on behalf of whom this suit has been commenced are entitled to overtime compensation for time spent traveling back to their base camps or headquarters locations upon completion of their tours of duty requires an interpretation of the terms of the collective bargaining agreement. By relying on the plain language of the state regulation for a definition of "hours worked" for purposes of determining eligibility for overtime, plaintiffs apparently failed to note that travel time is included within that definition only if it is "part of the duties of the employe[e] during normal working hours." 34 Pa. Code § 231.1. Surely plaintiffs do not mean to suggest that the question of whether the travel time at issue in this case qualifies as part of the duties of the employee or whether such travel is undertaken during the established normal working hours can be deter-

mined without reference to the terms of the collective bargaining agreement.

Moreover, despite plaintiffs' assertions to the contrary, the facts of this case do not establish that the employees are entitled to relief as a result of conduct that is independent of the employer's obligations under a collective bargaining agreement. Consequently, the matter now before this court is readily distinguishable from such cases as *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 565 (1987) (action commenced under the FELA to recover for injuries resulting from negligence of the employer occurring independently of the collective bargaining agreement not preempted by the RLA) and *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988) (none of the elements plaintiff must establish to make out the tort of retaliatory discharge implicates any term of the collective bargaining agreement, therefore, the claim is not preempted by federal labor law) wherein the Court recognized an independent state law claim, the resolution of which did not require an interpretation of the collective bargaining agreement. Plaintiffs cannot reasonably contend that the dispute in this case can be resolved absent reference to the collective bargaining agreement.

By enacting the RLA, Congress established a comprehensive scheme aimed at promoting stability in labor-management relations in the railway industry and fostering uniform adjudication of disputes arising in the context of a collective bargaining agreement. The Act also evinces Congress' intent to keep "minor disputes," such as the one at issue in this case, within the exclusive jurisdiction of the Adjustment Board and out of the courts. *Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978). Moreover, by channeling arbitrable matters to the National Railroad Adjustment Board, Congress attempted to assure that collective bargaining agreements will be enforced by arbitrators who are experts in "the

common law of [the] particular industry. *Conrail,* 491 U.S. at 310.

CONCLUSION

Upon consideration of the undisputed facts of this case, the court is left with the firm conviction that plaintiffs' claim has no independent basis in state law. Rather, the claim constitutes a "minor dispute" under the RLA that is inextricably intertwined with the collective bargaining agreement and that cannot be resolved absent an interpretation of that agreement. Consequently, the Adjustment Board has exclusive jurisdiction over this matter. The complaint before this court is, therefore, dismissed for lack of jurisdiction. An appropriate order follows.

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

C.A. No. 91 CV 2776

PENNSYLVANIA FEDERATION OF THE BROTHERHOOD MAINTENANCE OF WAY EMPLOYEES, *et al.*

v.

NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK")

STIPULATION OF FACTS

1. The Brotherhood Maintenance of Way Employees ("BMWE") is an unincorporated association organized for the usual purposes of a labor union. The BMWE is the designated representative, pursuant to the Railway Labor Act, of National Railroad Passenger Corporation's ("AMTRAK") employees working in its Track and Bridge and Building Departments. The Pennsylvania Federation is a local affiliate of the BMWE.

2. Jed Dodd is General Chairman and Trustee ad litem of the BMWE.

3. Vincent Bennett is an adult citzen of the Commonwealth of Pennsylvania. He is a member of the BMWE and employed by AMTRAK in Pennsylvania.

4. AMTRAK is a common carrier railroad engaged in interstate commerce. It operates intercity passenger trains in Pennsylvania, forty-four other states, the District of Columbia and Canada. AMTRAK owns and maintains railroad tracks and corresponding rights of way in D.C., Pennsylvania, New Jersey, New York, Delaware, Connecticut and Massachusetts.

5. BMWE and AMTRAK are parties to a collective bargaining agreement ("Agreement"), which is currently in effect. The Agreement is atached hereto as Exhibit A.

6. Articles I and II of the Agreement sets forth those job classifications in AMTRAK's Track Department and Bridge and Building Department coming under the representational jurisdiction of the BMWE. The employees holding these positions are responsible for maintaining the track and rights of way owned by Amtrak.

7. Some BMWE-represented employees working in AMTRAK's Track and Bridge and Building Departments in Pennsylvania are assigned to "camp cars". Camp cars are railroad cars outfitted with sleeping, eating and sanitary facilities. Employees assigned to the camp cars live in the camp cars for the entire work week, if they so choose.

8. At all times relevant to this action, many track Department and Bridge and Building Department employees assigned to camp car gangs in Pennsylvania were transported to and from the camp cars on AMTRAK vehicles operated by AMTRAK employees to the actual job site where the work was performed.

9. At all times relevant to this action, many Track Department and Bridge and Building Department employees of AMTRAK who were assigned to permanent headquarters in Pennsylvania were transported to and from the permanent headquarters on AMTRAK vehicles operated by AMTRAK employees to the actual job site where the work was performed.

10. At all times relevant to this action, the employees assigned to camp cars and permanent headquarters referred to above, worked at the job site until work was concluded for the day and then were usually required to use AMTRAK vehicles in order to return to the camp cars or headquarters.

11. Each employee is assigned a tour of duty, which specifies the regular work period for the day. Under the Agreement, all time falling within the tour of duty period, whether spent working or traveling to or from the job

site, is included within hours worked, for purposes of computing overtime pay.

12. Under Rule 53 of the Agreement, when an employee is called to work outside his tour of duty period, the time spent traveling to the job site, as well as the time spent working outside the tour of duty period, is paid at a rate one and one-half times the regular rate, regardless of the number of hours worked that week.

13. Track Department and Bridge and Building Department employees are paid at a straight time hourly rate as "travel time" pursuant to Rule 63 of the Agreement when they return to the camp cars or headquarters outside their tour of duty period, regardless of the number of hours worked that week.

14. At all times relevant to this action, pursuant to Rule 63 of the Agreement, with the exception of certain circumstances enumerated therein, the time spent by employees traveling outside and after their tour of duty period was not considered as time worked for the purposes of computing overtime, or for the purpose of computing whether an employee worked forty hours in a work week.

15 The Agreement, which includes Rules 53 and 63, as well as various letters of understanding appended thereto, all of which are attached as Exhibit A, sets forth the system routinely utilized by AMTRAK in paying its employees employed in the Track and Bridge and Building Departments for actual time waiting and/or traveling outside of their regularly advertised hours of duty.

16. The provisions of the Agreement relating to the treatment of travel time are the product of collective bargaining negotiations between BMWE and AMTRAK. These or similar provisions were contained in prior collective bargaining agreements between BMWE and AMTRAK's predecessor railroads, and are consistent with industry practice.

17. BMWE has not submitted this matter to the dispute resolution procedures that exist between the parties.

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